S.B. CIVIL REVISION PETITION NO.1348/2003

Mohan vs. Sobha Kanwar

Date : 3.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. K Trivedi, for the petitioner.
Mr. R Chouhan, for the respondent.

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Heard learned counsel for the parties.

According to learned counsel for the petitioner, the plaintiff filed the suit for eviction on the ground of default in payment of rent but has not pleaded that the tenant failed to tender rent and since the plaintiff has not pleaded the ground for eviction, therefore, there is non-disclosure of cause of action in the plaint, hence, the suit of the plaintiff was liable to be dismissed but has not been dismissed by the trial court despite the defendant's objection petition under Order 7 Rule 11 CPC.

Learned counsel for the petitioner relies on the judgment of this Court in the case of Phool Chand and another versus Dr. Gulab Chand reported in 1999(3) WLC (Raj.) 189 wherein this Court held that failure on the part of the landlord to mention material facts that the tenant did not pay or tender rent amounts to non-mention of material fact which amounts to no pleading with the result that no cause of action arises. On this, the decree passed

by the trial court was set aside by this Court.

It is clear from the facts mentioned in the impugned order that the plaintiff filed the suit with clear averments that the rent in the defendant is due from 1.10.1998 to 30.9.1999. The plaintiff also prayed for passing of decree of this amount. The defendant submitted objection about the form of pleading. The requirement of law is that the plaintiff is to prove that the rent was not tendered to the landlord and has not been paid to the landlord for six months before filing the suit by the landlord. That is a pure question of fact whether the rent was tendered or not, particularly, when there is allegation in the plaint that the defendant did not pay the rent for a particular period, then mere non-mentioning in specific words that the rent was not tendered to the landlord cannot be said to be a lack of pleading and the pleading is required to be read in harmonious way so as to gather the intention of the parties.

It is different thing that by evidence, the defendant may prove that in fact, it is a case of non-tender of rent and not of mere non-payment. If such defence is taken, then the Court can decide in thel ight of the pleadings but the plaint cannot be rejected under Order 7 Rule 11 CPC.

This Court in Phool Chand's case (supra) allowed the appeal and not allowed the application under Order 7 Rule 11 CPC and the Court has not rejected the plaint.

In view of the above, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya